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EMINENT DOMAIN - MISSISSIPPI

Ward Gulfport Properties, L.P. v. Mississippi State Highway Com'n

Supreme Court of Mississippi - October 22, 2015 - So.3d - 2015 WL 6388832

Property owner brought action seeking injunction for State Highway Commission's alleged taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation.

The Circuit Court granted summary judgment for Commission. Owner appealed.

The Supreme Court of Mississippi held that:

- Owner's claims were not barred by res judicata;
- Owner's claims were not barred by collateral estoppel;
- Genuine issue of material fact as to whether seeking permit constituted categorical taking precluded summary judgment; and
- Genuine issue of material fact as to whether seeking permit constituted partial regulatory taking precluded summary judgment.

Property owner's claims against State Highway Commission, alleging unlawful taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation, were not barred by res judicata. While owner had previously filed action in federal court against entity that granted permit to have permit invalidated, owner did not split claim, as it filed one action against Commission and another against entity, and subject matter before federal court was whether entity violated specific federal acts in issuing permit, while subject matter in state court was whether Commission's actions in seeking permit effected cognizable taking.

Property owner's claims against State Highway Commission, alleging unlawful taking arising out of Commission seeking permit to fill wetlands in roadbed of proposed limited-access road and pledging 1,300 acres of property as wetlands mitigation, were not barred by collateral estoppel. While owner had previously filed action in federal court against entity that granted permit to have permit invalidated, causation issue decided by federal court was whether entity violated federal acts in issuing permit so that it could invalidate permit, while causation issue in state court was whether Commission's actions effectuated taking without just compensation, and any alleged wrongdoing by Commission was not necessary to resolution in federal court, just as entity's actions were not necessary to resolution in state court.

Genuine issue of material fact as to whether permit sought by State Highway Commission to fill wetlands in roadbed of proposed limited-access road and pledge of 1,300 acres of property as wetlands mitigation was a permanent restriction cut short which left property owner without economically viable use of the property for the duration of the permit, as to constitute categorical taking, precluded summary judgment for Commission, in owner's action seeking injunction against

Commission for alleged taking.

Genuine issue of material fact as to whether permit sought by State Highway Commission to fill wetlands in roadbed of proposed limited-access road and pledge of 1,300 acres of property as wetlands mitigation constituted partial regulatory taking precluded summary judgment for Commission, in owner's action seeking injunction against Commission for alleged taking.

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